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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

E & E CO., LTD., a California Corporation, Plaintiff, v. CHIC HOME DESIGN LLC, a New York limited liability company, and DOES 1 through 10, inclusive Defendants.	Case No. **COMPLAINT FOR COPYRIGHT INFRINGEMENT (17 U.S.C. §§ 106, 113(a), 501)** DEMAND FOR JURY TRIAL

Plaintiff E & E CO., LTD., for its Complaint against Defendants CHIC HOME DESIGN LLC and DOES 1 through 10, complains as follows:

PARTIES

1. Plaintiff E & E CO., LTD. ("E&E") is, and at all relevant times was, a corporation organized under the laws of the State of California with its principal place of business in the City of Fremont in Alameda County, California. E&E is engaged in the wholesale home furnishings business under the registered fictitious business name "JLA Home."

2. E&E is informed and believes and on that basis alleges that Defendant CHIC HOME DESIGN LLC ("Chic") is a New York limited liability company with its headquarters and principal place of business in New York City, New York.

3. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES 1 through 10 are unknown to Plaintiff at the present time and said Defendants are therefore sued by such fictitious names. When the true names and capacities of said DOE Defendants have been ascertained, Plaintiff will seek to amend this Complaint to include such true names and capacities.

4. Plaintiff is informed and believes and on that basis alleges that at all relevant times herein, Defendant Chic and each DOE Defendant was the alter ego, agent, servant, employee, principal, officer, director, partner, representative, parent, subsidiary, successor-in-interest, aider-and-abettor, or co-conspirator of each of the other Defendants, and was acting with the knowledge, approval, and/or ratification of each of the other Defendants.

JURISDICTION

5. This copyright infringement action arises under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq*. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338 (exclusive original copyright jurisdiction).

6. This Court has both general and specific personal jurisdiction over Defendant Chic, pursuant to Rule 4(k)(1)(a) of the Federal Rules of Civil Procedure, and section 410.10 of the California Code of Civil Procedure (the forum state's long-arm statute). On information and belief, Defendant Chic is a New York limited liability company registered to do business in California (entity no. 201426210164) and doing substantial and continuous business in California, with an agent for service of process in Sacramento, California. Chic also knowingly and

willfully directed its infringing activity at the copyright owner, Plaintiff E&E, in the State of California.

VENUE

7. Venue is proper in this federal judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(d) and 1400(a) because on information and belief, Defendant Chic knowingly and willfully directed its infringing activity at the copyright owner, Plaintiff E&E, located within this District; sold and shipped infringing products in and to this District; maintains an agent for service of process in this District; and this Court has personal jurisdiction over Chic at the time of filing of this action.

GENERAL ALLEGATIONS

8. Plaintiff E&E and Defendant Chic are competitors in the business of wholesale selling of home furnishings.

9. E&E discovered that Chic was selling competing home furnishing products bearing graphic designs apparently copied from E&E's competing products and infringing on E&E's copyrights on those designs.

10. E&E informed Chic that E&E had discovered the infringement, and ordered Chic to cease and desist.

11. Chic did not agree to stop selling the infringing products in its inventory. E&E brings this action to stop, and obtain redress for, Chic's willful copyright infringement of E&E's graphic designs on its competing products.

ALLEGATIONS RELATED TO THE CLAREMONT FLORAL DESIGN

12. E&E exclusively owns an original textile floral print design designated as "02HY1369P" (the "Claremont Design").

13. E&E makes and sells textile products bearing its Claremont Design for profit.

14. E&E first offered products bearing its Claremont Design in or about April, 2014.

15. E&E applied for and obtained a United States copyright registration, Registration No. VA 1-982-368, for its Claremont Design, which effectively provided E&E with copyright protection commencing on October 1, 2015. E&E has not assigned, granted, conveyed, mortgaged, or otherwise transferred property rights in its Claremont Design to any other party.

16. Prior to Chic's infringing conduct described herein, E&E products bearing the Claremont Design were publicly advertised, marketed, and widely available for retail purchase.

17. E&E is informed and believes, and on that basis alleges, that prior to Chic's infringing conduct described herein, Chic had access to the Claremont Design.

18. E&E is informed and believes, and on that basis alleges, that Chic accessed a copy of the Claremont Design from E&E or an intermediary.

19. E&E's investigation revealed Chic to be advertising, marketing, distributing, and selling bedding products bearing a textile print that is substantially identical to the Claremont Design (hereafter, "Accused Products A"). Accused Products A include, but are not limited to, comforters, duvet covers, and pillow shams marketed under, at least, the names "Wildflowers," "Gray Primrose," "Botanic Garden,"and "Liha."

20. An illustrative comparison of E&E's Claremont Design against an exemplar of Defendant's Accused Products A created by laying Chic's infringing product (on the left) partly over E&E's product (on the right) is set forth as follows:

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21. The substantial similarity between the Claremont Design and the graphic designs borne by Accused Products A is too striking to be the result of anything other than copying.

22. E&E sent a cease-and-desist letter to Chic on or about August 29, 2016 regarding, inter alia, Chic's infringement of the Claremont Design in Accused Products A.

23. Chic responded by email on October 10, 2016, but did not agree to cease sales of Accused Products A in its inventory. E&E responded to Chic by email on the same day (October 10, 2016), but Chic never responded further.

24. E&E is informed and believes, and on that basis alleges, that Chic has willfully sold Accused Products A, and willfully continued to sell Accused Products A after receiving the cease-and-desist letter from E&E, and currently continues to sell Accused Products A.

25. E&E is informed and believes, and on that basis alleges that Chic copied, manufactured (or caused to be manufactured), distributed, displayed publicly, and sold and continues to sell products bearing the Claremont Design with knowledge that the Claremont Design belonged to E&E.

26. E&E is informed and believes, and on that basis alleges that Chic copied, manufactured (or caused to be manufactured), distributed, displayed publicly, and sold products bearing the 02HY1369P Design without the copyright owner's authorization and with scienter that it had no right to do so.

ALLEGATIONS RELATED TO THE CLARA GEOMETRIC DESIGN

27. E&E exclusively owns an original textile geometric pattern design designated as "08MR0005P" (the "Clara Design").

28. E&E makes and sells textile products bearing its Clara Design for profit.

29. E&E first offered products bearing its Clara Design in or about April, 2014.

30. E&E applied for and obtained a United States copyright registration, Registration No. VA 1-946-414, for its Clara Design, which effectively provided E&E with copyright protection on February 5, 2015. E&E has not assigned, granted, conveyed, mortgaged, or otherwise transferred property rights in the Clara Design to any other party.

31. Prior to Chic's infringing conduct described herein, E&E products bearing the Clara Design were publicly advertised, marketed, and widely available for retail purchase.

32. E&E is informed and believes, and on that basis alleges, that prior to Chic's infringing conduct described herein, Chic had access to the Clara Design.

33. E&E is informed and believes, and on that basis alleges, that Chic accessed a copy of the Clara Design from E&E or an intermediary.

34. E&E's investigation revealed Chic to be advertising, marketing, distributing, and selling bedding products bearing a textile print that is substantially identical to the Clara Design (hereafter, "Accused Products B"). Accused Products B include, but are not limited to, quilts, coverlets, and pillow shams marketed under, at least, the names "Maricel Blue," "Blue Lucy," "Yellow Virginia," and "Lori."

35. An illustrative comparison of E&E's Clara Design against an exemplar of Defendant's Accused Products B created by laying Chic's infringing product (on the left) partly over E&E's product (on the right) is set forth as follows:

36. The substantial similarity between the Clara Design and the graphic designs borne by Accused Products B is too striking to be the result of anything other than copying.

37. E&E sent a cease-and-desist letter to Chic on or about August 29, 2016 regarding, inter alia, Chic's infringement of the Clara Design in Accused Products B.

38. Chic responded by email on October 10, 2016, but did not agree to cease sales of Accused Products B in its inventory. E&E responded to Chic by email on the same day (October 10, 2016), but Chic never responded further.

39. E&E is informed and believes, and on that basis alleges, that Chic has willfully sold Accused Products B, and willfully continued to sell Accused Products B after receiving the cease-and-desist letter from E&E. E&E is not certain whether Chic currently continues to sell Accused Products B, but Chic has not informed E&E that it has ceased its sales of Accused Products B.

40. E&E is informed and believes, and on that basis alleges that Chic copied, manufactured (or caused to be manufactured), distributed, displayed publicly, and sold products bearing the Clara Design with knowledge that the Clara Design belonged to E&E.

41. E&E is informed and believes, and on that basis alleges that Chic copied, manufactured (or caused to be manufactured), distributed, displayed publicly, and sold products bearing the Clara Design without the copyright owner's authorization and with scienter that it had no right to do so.

FIRST CLAIM FOR RELIEF

(For Copyright Infringement -- 17 U.S.C. §§ 106, 113(a), 501)

42. E&E incorporates herein the allegations contained in the preceding paragraphs of this Complaint.

43. The Claremont Design and the Clara Design will be referred to collectively as the "Subject Designs," and Accused Products A and Accused Products B will be referred to collectively as the "Accused Products."

44. E&E is informed and believes and on that basis alleges that Chic had access to all of E&E's Subject Designs.

45. E&E is informed and believes and on that basis alleges that Chic manufactures, or causes to be manufactured, textile products bearing graphic designs, and advertises, markets, distributes, and sells such products for profit.

46. E&E is informed and believes and on that basis alleges that Chic infringed E&E's copyrights by causing the creation, making, developing, distributing and/or selling of the Accused Products bearing graphic designs substantially similar to, and copied from, the Subject Designs.

47. As set forth above, E&E obtained United States copyright registration of each of the Subject Designs either before or less than five years after the respective designs were made public.

48. E&E has not assigned, granted, conveyed, mortgaged, or otherwise transferred property rights in any of the Subject Designs to any other party.

49. E&E is the legal and beneficial owner of the Subject Designs.

50. Due to Chic's acts of infringement, E&E has suffered damages to its business in an amount to be established at trial.

51. Due to Chic's acts of infringement, E&E has suffered general and special damages in amounts to be established at trial.

52. Due to Chic's acts of infringement, Chic has obtained direct and indirect profits it would not otherwise have realized but for its infringement of the Subject Designs, entitling E&E to disgorgement of Chic's profits directly and indirectly attributable to Chic's infringement of the Subject Designs in an amount to be established at trial.

53. In the alternative, E&E is entitled to statutory damages from Chic for each Subject Design infringed by Chic.

54. E&E is informed and believes and on that basis alleges that Chic's infringement of the Subject Designs was willful, reckless and/or in blatant disregard of E&E's rights as copyright holder.

55. E&E has incurred and will continue to incur attorneys' fees, costs, and expenses to prosecute this copyright infringement action. The circumstances of this dispute warrant recovery of attorneys' fees and costs under 17 U.S.C. section 505.

PRAYER FOR RELIEF

Wherefore, Plaintiff E&E prays for judgment as follows:

1. That Chic, and its agents and employees, be enjoined from infringing E&E's copyrights, specifically including copyrights for the Subject Designs;

2. That E&E be awarded all direct and indirect profits of Chic plus all direct and indirect losses of E&E, plus any other monetary advantage gained by Chic through its infringement, the exact sum to be proven at trial; or, to the extent elected before final judgment, statutory damages available under the Copyright Act;

3. That a trust be imposed over all Accused Products and any revenues derived from the sale or distribution of any Accused Products or unauthorized exploitation of the Subject Designs;

4. That Chic account to E&E for its profits from infringement of the Subject Designs;

5. That E&E be awarded additional, enhanced damages for the reckless and willful nature of Chic's infringement of the Subject Designs;

6. That E&E be awarded its attorneys' fees under 17 U.S.C. section 505;

7. That E&E be awarded pre-judgment interest as allowed by law;

8. That E&E be awarded the costs of this action; and

9. That E&E be awarded such further legal and equitable relief as the Court deems just and proper.

DATED: February 9, 2017

Michael W. Ellison
Michael G. Bosko
SMITH ♦ ELLISON
A Professional Corporation

By /S/ MICHAEL W. ELLISON
Michael W. Ellison
Attorneys for Plaintiff E & E CO., LTD.

Plaintiff E & E CO., LTD. hereby demands a trial by jury.

DATED: February 9, 2017

Michael W. Ellison
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By /S/ MICHAEL W. ELLISON
Michael W. Ellison
Attorneys for Plaintiff E & E CO., LTD.